

Amendment and Response Under 37 C.F.R. 1.116

Applicant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238,101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

REMARKS

The following remarks are made in response to the Final Office Action mailed March 10, 2009. Claims 31-40 were rejected. With this Amendment and Response, claims 31-35 have been amended. Claims 31-40 remain pending in the application and are presented for reconsideration and allowance.

Double Patenting Rejection

The Examiner provisionally rejected claims 31, 32, 33, 34, 35, and 36-40 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Applicant respectfully requests that if the below rejections are removed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P § 804 and claims 31-40 be allowed.

Claim Rejections under 35 U.S.C. § 112

The Examiner rejected claims 31-40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claim invention.

The Examiner contends that Applicant's amended claims include the limitation: "accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value other than the potential user's geographic location;" is based on new matter not adequately described in the specification.

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While Applicant disputes the Examiner's contention, Applicant has amended the claims to remove "other than the potential user's geographic location."

In view of the above, claims 31-40 are believed to be in form for allowance. Therefore, Applicant respectfully requests that rejections to these claims under 35 U.S.C. § 112, first paragraph, be reconsidered, and that the rejections be removed and these claims be allowed.

Claim Rejections under 35 U.S.C. § 103

The Examiner rejected claims 31-40 under 35 U.S.C. § 103(a) as being unpatentable over the Hailpern et al. U.S. Patent No. 6,922,672.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 of **accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and a service date/time.**

The Examiner has never contended that the Hailpern et al. Patent teaches a date parameter or a date/time parameter as being associated with a composite resource.

While the Examiner contends that the Hailpern et al. Patent teaches a time parameter, the Applicant respectfully disagrees. The Examiner states at pages 3-4 of the Final Office Action that "The location of these resources is specified as well as the time for the transaction. See at least column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25, and 50-67, column 4, lines 20-45 and column 5, lines 1-6." However, none of these citations specify the time for the transaction. Because there are no citations which specify the time for the transaction, and because a transaction inherently has a time parameter, to the extent the reader is required to state a time parameter to understand the invention, one time parameter that makes sense given an understanding of what the invention actually does (i.e., a "push" marketing system enabled by geographic user data) is "now." Moreover, "now" is technically not a time parameter unless associated with a reference time parameter (i.e., "now" = 6:00 p.m. EST). Without the association, "now" represents the complete absence of a time parameter. Therefore, the Hailpern et al. Patent teaches nothing about specifying the time for the transaction.

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The Hailpern et al. Patent also does not teach or suggest the limitations of independent claims 31-35 related to **wherein the at least one service date/time is a date/time point or range measure indicating a present or future first date/time when the service is available.**

The Examiner has never contended that the Hailpern et al. Patent teaches a date parameter or a date/time parameter as being associated with when a service is available.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date/time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date/time period beginning at the first date/time and ending at a second date/time.**

The Examiner has never contended that the Hailpern et al. Patent teaches a date parameter or a date/time parameter as being associated with measurement of capacity.

Firstly, the Hailpern et al. Patent does not teach or suggest how to measure capacity as required by these recited limitations of independent claims 31-35. The Examiner states at page 5 of the Final Office Action that “Hailpern teaches a measure of capacity or inventory for a promotion which has a first and second time (column 2, lines 35-45 and 51-65, column 4, lines 20-45 and column 5, lines 30-37).” However, none of these citations specify any time parameter, whether a first time or a second time. Because there are no citations which specify a time parameter, and because “a measure of an ability to produce and/or make available additional quantities” requires that there be time boundaries to perform a measurement, the Hailpern et al. Patent teaches nothing about “a measure of an ability to produce and/or make available additional quantities.”

Secondly, the Hailpern et al. Patent does not teach or suggest how to measure an ability to produce as required by the above limitations of independent claims 31-35. The Examiner states at page 5 of the Final Office Action that “Additionally, Hailpern et al. teaches purchasing products at a comparatively low wholesale price in column 2, lines 35-45 or a measure of an ability to produce and/or make available additional quantities.” In the Hailpern et al. Patent,

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“[p]urchasing products at a comparatively low wholesale price”, however, “is a measure of the on-hand supply and/or availability.” It is not “a measure of an ability to produce and/or make available additional quantities.” When the Hailpern et al. Patent discusses about “[p]urchasing products at a comparatively low wholesale price”, there are numerous undisclosed steps before these products can be made available to consumers through its Invention. The “goods” must be: a) picked; b) shipped; c) delivered; d) received; e) inventoried; and f) placed on the sales floor. The “on-hand supply” is comprised of those items that are on the sales floor, plus any items in “back stock” on the store premises (i.e., literally “stock” in the “back” of the store). The Hailpern et al. Patent is therefore specifically directed to goods that are in stock or “in inventory” at a store location. Therefore, the Hailpern et al. Patent is not directed to goods at any stage prior to their being in stock or “in inventory” (i.e., ordered, picked, shipped, delivered or received). In direct contrast, since Hammann’s Inventions are in the human-factor resource and prepared food “service” industries, their focus is primarily on “the ability to produce and/or make available additional quantities”. Under the Hammann Invention, “raw material” resources may be in inventory, but these resources must be manipulated or transformed by the human factor resource before they become a composite resource. In fact, no on-hand inventory of a composite resource may ever exist and the Hammann Invention only addresses this parameter if it is applicable. For example, medical supplies are resources that in part comprise most health care composite resources. However, these resources must be manipulated or transformed by a human factor resource before they are consumed by the user. As another example, frozen or fresh meats, vegetables and fruits are resources that in part comprise most prepared food composite resources. However, these resources must be thawed and/or cooked, portioned and placed into an arrangement on a plate (i.e., “kitted”), and hand-delivered to the user, each step potentially requiring the use of one or more human factor resources. In each of these instances, the presence of human factor resources are key determinants in “an ability to produce and/or make available additional quantities.”

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the demand for the at least one composite resource is a measure of**

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the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date/time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period.

The Examiner has never contended that the Hailpern et al. Patent teaches a date parameter or a date/time parameter as being associated with measurement of demand.

Examiner states at page 5 of the Final Office Action that “Hailpern et al. teaches that demand is the consumption or use of resources over a time frame. See column 2, lines 37-65, wherein demand is discussed in terms of ‘current’ (demand is low) and future (moving the item over time in a dynamic environment).” Even if the Examiner’s contention were true, it still does not address Applicant’s previously-stated remarks that “even were the Hailpern et al. Patent to disclose any future time, it nonetheless does not teach or suggest how to measure demand.”

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date/time period beginning at the first date/time and ending at a second date/time is derived from at least one human factor resource and is not a static ability.**

The Examiner has never contended that the Hailpern et al. Patent teaches a date parameter or a date/time parameter as being associated with measurement of an ability to produce and/or make available additional quantities.

The Examiner contends, in essence, at pages 5-6 of the Final Office Action that there is no meaningful distinction between human resources and that therefore all human resources are human factor resources. Under the Examiner’s logic, an anesthesiologist billing \$1,000 per hour as one human factor resource comprising a composite resource identified as a cranial surgery is not meaningfully distinct from a grocery store stock clerk earning \$10 per hour who might shelve 2,000 products in an hour, each individual product its own composite resource. In the former instance, the medical professional contributes substantial economic value to a single composite resource. In the latter instance, the stock clerk contributes \$0.005 in economic value

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to a single composite resource. In the embodiments of the invention defined in claims 31-35, the contribution of the grocery store stock clerk would be described as a “static ability”. These human resources are expressly not considered in measuring “an ability to produce and/or make available additional quantities of the at least one composite resource” as required by the limitations of claims 31-35. In contrast, the Hailpern et al. Patent expressly indicates that it treats human resources merely as “an upper bound on the additional customers [a store] can handle at anytime.” See column 5, lines 30-31. The Hailpern et al. Patent therefore admits that these human resources represent a “static ability” and it therefore does not attempt to modify capacity in any manner.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value** wherein the **at least one composite resource related to the potential user’s at least one transaction parameter value**.

The Examiner states at page 6 of the Final Office Action that “Hailpern et al. discloses in column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6, that the customer’s behavior and information is monitored via the computer system, wherein the information includes profile information, past buying history, etc.” Column 2, lines 27-36 describes how a target group of customers is selected. Column 3, lines 50-55 describes when a customer of a target group is defined as active. Column 5, lines 1-6 indicates that target groups have many different characteristics, each which can be separately evaluated. However, how a target group of customers is selected, when a customer is defined as active and how target group characteristics are evaluated does not create a “relationship” between the at least one transaction parameter value accepted from the user and the communicated portion of the transaction parameter values for at least one composite resource as defined for example in claim 31: “communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource **related to the potential user’s at least one transaction parameter value** (**emphasis added**).”

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The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value** wherein the **at least one composite resource related to the potential user's at least one transaction parameter value**.

In view of the above, each independent claim 31-35 includes limitations which are not taught or suggested by the Hailpern et al. Patent, alone or in combination with the other cited references. In addition, dependent claim 36 further defines patentably distinct amended independent claim 31; dependent claim 37 further defines patentably distinct amended independent claim 32; dependent claim 38 further defines patentably distinct amended independent claim 33; dependent claim 39 further defines patentably distinct amended independent claim 34; and dependent claim 40 further defines patentably distinct amended independent claim 35. Therefore, these dependent claims are also believed to be allowable.

In addition, the Hailpern et al. Patent does not teach or suggest the limitations of independent claims 36-40 related to **wherein when the demand exceeds the capacity for the at least one composite resource, the modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource**.

The Examiner continues to suggest that the Hailpern et al. Patent is capable of decreasing demand. As previously noted, the suggestion fails to distinguish between base demand and adjusted demand. Base demand represents demand before any communication is sent to the target group. Adjusted demand represents the effect of the communication sent to the target group, plus base demand. In order for the Hailpern et al. Patent to be capable of decreasing demand, it would have to create circumstances where adjusted demand would actually be lower than base demand. In other words, when faced with a binomial choice between sending out a communication or not sending out a communication (where not sending a communication would leave base demand unchanged), the supplier of goods would actually have to take affirmative action to discourage persons not part of the target group through a communication to the target

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group. An example of such a message to the target group would be: "Our product is made with toxic lead paint. Tell the news media and your friends not to buy it." Put generally, to reduce adjusted demand, the outcome of the message must not only discourage any member of the target group from demanding the product, but it also must discourage customers who are not part of the target group from purchasing the product. Applicant's claim above is not true, however, when one or more members of the target group comprise part of the base demand calculation. In that instance, a direct communication to these individuals as members of the target group is capable of reducing demand. An example of such a message to the target group, in relation to a good normally priced at \$20, would be: "Knit sweaters, assorted colors, now \$40." Since the Hailpern et al. Patent describes a "push" marketing system while the subject matter claimed in claims 31-40 defines a "pull" marketing system wherein users enter a transaction parameter value related to a communicated composite resource, the number of instances where the self-initiating "pull" user is calculated as part of base demand will be substantially larger. Therefore, whereas if the Hailpern et al. Patent reduces adjusted demand, it does so by unlucky accident, when embodiments of the invention defined in claims 31-40 reduce adjusted demand during a particular date/time period, it does so with express intent, hopefully by shifting that demand to increase demand in another date/time period, thereby leveling off peaks and valleys in demand.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection to the claims, and requests allowance of these claims.

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CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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